of the procedures that an agency uses to reach a determination" that were telling. Rather, the key factors in evaluating whether preclusion is proper are that "these procedures are administered by a state agency" that ensures that "the parties have an adequate opportunity to litigate." *Id.* at 312. These factors are enunciated in the "*Elliot* test," cited by the Court of Appeals:

> [W]hen a state agency acting in a judicial capacity resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, federal courts must give the agency's factfinding the same preclusive effect to which it would be entitled in the state's courts.

Id. (quoting *University of Tennessee v. Elliot*, 478 U.S. 788, 799 (1986) (internal quotation, citation, and indication of alteration from original omitted)).

Here, these factors were clearly met and stand in stark contrast to the factors noted by this Court in *McDonald* regarding the unappealed collective bargaining arbitration at issue in that case. First, the Court of Appeals noted the statutory origin of the 3020-a hearing, as opposed to the contractually created arbitration hearing present in *McDonald*. *McDonald*, 466 U.S. at 290. In contrast to the aggrieved party in *McDonald*, who was represented by a labor union whose interests may not have aligned with his own, *McDonald*, 466 U.S. at 291, Petitioner had exclusive control over her defense and every personal incentive to assert that defense because her employment was at stake.

Further, pursuant to New York's statutory scheme, Petitioner, unlike the aggrieved party in *McDonald*, was able to and did appeal the 3020-a hearing officer's determination to the State Supreme Court.

Moreover, in contrast to the type of arbitration hearing examined in *McDonald*, where "[t]he record of the arbitration proceedings is not as complete; the usual rules of evidence do not apply; and rights and procedures common to civil trials, such as discovery, compulsory process, cross-examination, and testimony under oath, are often severely limited or unavailable," *Id.* (citation omitted), pursuant to the provisions of §3020-a, Petitioner was represented by counsel, and the hearing employed procedures substantially similar to those used in a judicial proceeding, including all testimony being under oath and Petitioner having the right to subpoena witnesses and to cross examine witnesses.

Finally, after a hearing that lasted fifteen days, the 3020-a hearing officer issued a detailed 153 page decision explaining its ruling. The Court of Appeals recognized that the 3020-a hearing provided Petitioner with a full and fair opportunity to litigate the issues she wishes to re-litigate in federal court.

While addressing none of the factors that differentiate the 3020-a hearing from the type of hearing addressed in *McDonald*, Petitioner's sole attack on the reliability of the 3020-a hearing is her contention that the New York statutory scheme recognizes that a 3020-a hearing could, theoretically, result in "a determination that may be made in violation of a lawful procedure, was affected by an error of law, may be arbitrary and capricious or an abuse of discretion, or may not be supported by substantial evidence." [Pet'r App. 12]

This reasoning, however, ignores in full a 3020-a party's right to appeal, as Petitioner did here, the results of a 3020-a determination in New York's Supreme Court. Here, the New York State court reviewed Petitioner's case and dismissed her case, noting "the lack of any showing that the [3020-a] hearing officer exceeded his power and lack of any allegation of fraud or bias." 411 F.3d at 310. Therefore, the very factors that Petitioner suggests may be lacking in the 3020-a determination were not only considered by a state court, but also rejected. Therefore, Petitioner has raised no valid concern as to the validity and preclusive effect of the 3020-a determination.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that the Petition for a Writ of Certiorari filed by Petitioner be denied.

Respectfully submitted,

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